STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 12, 2003
v	No. 238494 Oakland Circuit Court
CURTIS MARK WEATHERS, Defendant-Appellant.	LC No. 2000-174901-FH

Before: Cooper, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of delivery of between 225 and 650 grams of cocaine, MCL 333.7401(2)(a)(ii); and possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v). Defendant was sentenced as a repeat controlled substance offender, MCL 333.7413(2), to consecutive terms of twenty to sixty years' imprisonment for the delivery conviction and one to eight years' imprisonment for the possession conviction. He appeals as of right. We affirm.

I. Background Facts

The charges in this case arise out of an investigation conducted by the Royal Oak Police Department. The police received information from an informant concerning an arrangement to purchase nine ounces of cocaine from defendant. At trial, the informant testified that he agreed to help the police because they possessed a videotape of him selling drugs and informed him that he could spend the next twenty years in jail if convicted. The police requested the informant's assistance after they searched his home on September 7, 2001, and discovered guns, a scale, marijuana, and cocaine. The informant stated that he was never promised anything for his cooperation. However, he acknowledged that at the time of trial no formal charges had been brought against him.

On September 15, 2001, the informant went to the Royal Oak police department and met with Officer Martin Lavin. In Officer Lavin's presence, the informant telephoned defendant to finalize the drug deal. Before the informant went to meet defendant, Officer Lavin searched the informant's vehicle and person for money or narcotics but did not find anything. Thereafter, the police provided the informant with a digital scale, $3,000 in marked currency, and a transmitter that would allow the police to monitor all communications inside the car. The police followed

the informant to the McDonald's parking lot at Eight Mile and Dequindre and set up surveillance.

Approximately thirty minutes later, defendant arrived in a vehicle driven by Kenyan Roberts. Officer Gordon Young testified that he observed defendant exit the vehicle, place a round brown package under his shirt, and walk over to the informant's location. Thereafter, defendant entered the passenger side of the informant's vehicle and closed the door. The informant stated that defendant handed him a brown bag from inside his jacket that contained cocaine. Shortly thereafter, the informant gave the prearranged signal by asking to weigh the cocaine and the police surrounded the informant's vehicle. When Officer Young opened the passenger door, he observed the scale and a bag of cocaine between defendant's legs. After searching defendant, the police discovered a smaller plastic bag of cocaine in his front pocket. Officer Young testified that defendant subsequently admitted that he delivered the cocaine to the informant in return for a bracelet, a gold chain, and the smaller bag of cocaine that was discovered in his pocket.

An evidence technician testified that he discovered a latent fingerprint on the brown paper bag and identified it as belonging to defendant. The packages of cocaine recovered from inside the informant's vehicle and in defendant's pocket weighed approximately 245 grams and 15 grams respectively.

II. Legal Analysis[1]

A. Suppression of Evidence

Defendant initially contends that the trial court erred when it refused to suppress the evidence or dismiss the charges against him. According to defendant, suppression was warranted in this case because the evidence was illegally obtained when the police searched and arrested defendant outside their jurisdiction. We disagree. A trial court's ruling on a motion to suppress is reviewed on appeal for clear error. *People v Sobczak-Obetts*, 463 Mich 687, 694; 625 NW2d 764 (2001). To the extent this ruling "involves an interpretation of the law or the application of a constitutional standard to uncontested facts, our review is de novo." *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001).

It is uncontested that the Royal Oak police department acted outside its boundaries when it arrested defendant in the City of Detroit.[2] MCL 764.2a governs a peace officer's authority to act beyond the officer's own boundaries and provides as follows:

---

[1] Defendant, in propria persona, filed a supplemental brief essentially addressing the same arguments raised by his appellate counsel. However, defendant further suggested that the trial court's denial of his motion to suppress without an evidentiary hearing was error. Nevertheless, defendant failed to cite any portion of the record in support of his claim. A "'[d]efendant may not leave it to this Court to search for a factual basis to sustain or reject his position.'" *People v Traylor*, 245 Mich App 460, 464; 628 NW2d 120 (2001), quoting *People v Norman*, 184 Mich App 255, 260; 457 NW2d 136 (1990).

[2] During the February 7, 2001 hearing on defendant's motion for change of venue, the (continued…)

> (1) A peace officer of a county, city, village, township, or university of this state may exercise the authority and powers of a peace officer outside the geographical boundaries of the officer's county, city, village, township, or university under any of the following circumstances:
>
> (a) If the officer is enforcing the laws of this state in conjunction with the Michigan state police.
>
> (b) If the officer is enforcing the laws of this state in conjunction with a peace officer of any other county, city, village, township, or university in which the officer may be.
>
> (c) If the officer has witnessed an individual violate any of the following within the geographical boundaries of the officer's county, city, village, township, or university and immediately pursues the individual outside of the geographical boundaries of the officer's county, city, village, township, or university:
>
> (i) A state law or administrative rule.
>
> (ii) A local ordinance.
>
> (iii) A state law, administrative rule, or local ordinance, the violation of which is a civil infraction, municipal civil infraction, or state civil infraction.

Defendant correctly notes that the Royal Oak police department did not act within any of these exceptions. However, this Court has previously determined that the purpose of MCL 764.2a "'is not to protect the rights of criminal defendants, but rather to protect the rights and autonomy of local governments.'" *People v McCrady*, 213 Mich App 474, 480-481; 540 NW2d 718 (1995), quoting *People v Clark*, 181 Mich App 577, 581; 450 NW2d 75 (1989). Moreover, our Supreme Court has specifically concluded that "[t]he Fourth Amendment exclusionary rule only applies to constitutionally invalid arrests, not merely statutorily illegal arrests." *People v Hamilton*, 465 Mich 526, 532-533; 638 NW2d 92 (2002). Contrary to defendant's contention on appeal, we do not find that this case is distinguishable from established precedent because the entire police operation occurred outside the department's boundaries. While a violation of this statute may warrant other potential sanctions, Michigan courts have steadfastly refused to employ the exclusionary rule as a consequence for such actions. See *id*. at 535, n 12.

Further, defendant has failed to show that the police department lacked the authority to arrest defendant. As a general rule, police officers acting without a warrant and outside their territorial jurisdiction have all the powers of arrest possessed by private citizens. *Id.* at 530-531; *People v Davis*, 133 Mich App 707, 715; 350 NW2d 796 (1984). A private person may make an arrest if the person to be arrested has committed a felony, as provided in MCL 764.16(a)-(b). In

---

(…continued)

prosecution stipulated that the crime in this case occurred in Detroit. The trial court noted that the location in question was within one mile of the Detroit-Royal Oak border.

this case, the informant, while in the presence of the police, called an individual to set up a deal to purchase nine ounces of cocaine. The police thereafter observed defendant carry a package to the informant's vehicle at the prearranged time and place. When the police opened the informant's vehicle they could see a package of cocaine on the floor by defendant. Because defendant committed a felony, MCL 333.7401(2)(a)(ii), the arrest in this case was proper.

B. Entrapment

Defendant next asserts that the trial court erroneously denied his motion to suppress the evidence against him on entrapment grounds. Specifically, defendant claims that the police used their informant to entice defendant, who was a drug addict, to sell cocaine. Defendant further purports that the police informant also coerced defendant to sell more cocaine than he was predisposed to sell. We disagree. A trial court's findings concerning entrapment are reviewed for clear error. *People v Johnson*, 466 Mich 491, 497; 647 NW2d 480 (2002).

A defendant has the burden of proving entrapment by a preponderance of the evidence. *People v Pegenau*, 447 Mich 278, 294; 523 NW2d 325 (1994). When reviewing an allegation of entrapment, the focus is on the propriety of the government's conduct, rather than on the defendant's predisposition to commit the crime. *People v Hampton*, 237 Mich App 143, 156; 603 NW2d 270 (1999). Entrapment occurs when: (1) the police engage in impermissible conduct which would induce a law-abiding individual under similar circumstances to commit the crime; or (2) the police engage in conduct so reprehensible that is cannot be tolerated by the court. *Johnson, supra* at 498. Police investigative measures may extend beyond a tolerable level when the government purposefully uses continued pressure, threats of arrest, appeals to friendship or sympathy, or procedures to escalate the criminal culpability. *People v Jamieson*, 436 Mich 61, 89; 461 NW2d 884 (1990).

Defendant argues he was entrapped in this case because the amount of drugs involved increased from four ounces to nine ounces. However, a review of the record in this case does not reveal that the police continuously attempted to increase the amount. Rather, the police simply asked their informant to get as much drugs as he could from his supplier. The mere furnishing of an opportunity to commit a crime is not entrapment. *Johnson, supra* at 498. Moreover, the record does not show that the police officer's conduct in this case was so reprehensible or intolerable that it amounted to entrapment.

C. Venue

Defendant also claims that the trial court should have quashed the information or granted his motion to change venue. While defendant raises these arguments in separate issues on appeal, he essentially argues that relief is mandated because the entire criminal episode occurred in Wayne County. However, defendant fails to note in his appellate brief that this Court previously denied his interlocutory application for leave to appeal on the basis of venue for lack of merit. See *People v Weathers*, unpublished order of the Court of Appeals, entered April 20, 2001 (Docket No. 232725). The law of the case doctrine applies to issues decided in interlocutory proceedings. *People v Freedland*, 178 Mich App 761, 770; 444 NW2d 250 (1989). Accordingly, we are bound by the previous ruling issued by this Court. *People v Kozyra*, 219 Mich App 422, 433; 556 NW2d 512 (1996).

D. Prior Bad Acts Testimony

Defendant further opines that the trial court improperly admitted prior bad acts evidence that he sold drugs to the informant in the past. A trial court's decision to admit or deny evidence is generally reviewed on appeal for an abuse of discretion. *People v Manser*, 250 Mich App 21, 31; 645 NW2d 65 (2002). However, because defendant failed to timely object to this evidence, our review is limited to plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

During direct examination, the prosecutor asked the informant if he had conducted previous "transactions" in his vehicle with defendant. After the informant responded "yes," defense counsel objected and stated that he was given no notice that the prosecution intended to admit any prior bad acts. However, in response to an earlier question from the prosecutor, the informant admitted, without objection, that the September 15, 2001 incident was not the first time he had purchased narcotics from defendant. The prosecutor asserted that this evidence was admissible because it was part of the res gestae of the crime. See *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978). While the trial court noted that it would have been better practice to make a MRE 404(b) motion, it admitted the evidence because the theory of the case was that the informant made a deal with his supplier. The trial court further noted that it would have granted any MRE 404(b) motion to bring in this evidence. The trial court ultimately provided a limiting instruction to the jury concerning prior acts evidence.

Assuming, arguendo, that this evidence constituted impermissible bad acts evidence, defendant has failed to establish that it affected his substantial rights. There was overwhelming evidence presented that defendant delivered between 225-650 grams of cocaine. The record shows that the informant called an individual from the police department regarding a deal to purchase nine ounces of cocaine. Defendant arrived at the prearranged time and location for the exchange and was observed carrying a package to the informant's car. The police subsequently observed a large quantity of cocaine by defendant and confiscated a smaller bag of cocaine located in his pocket. The police had previously searched the informant's vehicle for drugs but did not find any. Moreover, another police officer testified that defendant admitted to delivering the cocaine as a middleman in exchange for the smaller bag of cocaine and some jewelry. Accordingly, we find no error requiring reversal. *Carines, supra* at 763-764.

E. Sentencing

Defendant ultimately contends that the trial court erroneously refused to depart from the sentence mandated by statute. We disagree. A trial court's decision that substantial and compelling factors merit a departure from the statutory minimum sentence is reviewed for an abuse of discretion. *People v Izarraras-Placante*, 246 Mich App 490, 497; 633 NW2d 18 (2001).

Under MCL 333.7401(4) a trial court may depart from the mandatory minimum term of imprisonment "if the court finds on the record that there are substantial and compelling reasons to do so." When making these decisions, a trial court may only consider objective and verifiable factors. *People v Daniel*, 462 Mich 1, 6; 609 NW2d 557 (2000). In *Daniel, supra* at 7, the Supreme Court provided the following as examples of objective and verifiable factors to consider: "(1) mitigating circumstances surrounding the offense; (2) the defendant's prior

record; (3) the defendant's age; and (4) the defendant's work history." Nevertheless, the Supreme Court provided that deviation from the minimum mandatory sentence should only occur in exceptional cases. *Id*.

At trial, defendant argued that a downward departure was warranted given his age, his strong family support,[3] his potential for rehabilitation, and his drug dependency at the time of this offense. On appeal, defendant further notes his minimal criminal record, his education, and the fact that he completed a substance abuse program in 2001. He also asserts that the trial court erroneously considered the fact that a lot of children and other people would not have access to the drugs confiscated during his arrest. Rather, defendant argues that such considerations were improper because the "drug deal" in this case was part of a police operation. Defendant ultimately contends that his sentence for delivering between 225-650 grams of cocaine amounts to cruel and unusual punishment.

After reviewing the record, we are unable to conclude that the trial court abused its discretion when sentencing defendant. The circumstances surrounding this case are not so exceptional that departure is warranted. Further, we note that this Court has held that the mandatory penalties provided under MCL 333.7401(2)(a)(ii) do not constitute cruel and unusual punishment. *People v Marji*, 180 Mich App 525; 542-543; 447 NW2d 835 (1989).

Affirmed.

/s/ Jessica R. Cooper
/s/ David H. Sawyer
/s/ William B. Murphy

[3] *People v Bates*, 190 Mich App 281, 283; 475 NW2d 392 (1991) (family support is considered unverifiable).